

## **REMARKS**

### **I. Amendments**

Upon entry of the above amendments, claims 40-55 and 57-61 will be pending in the present application. Claims 45-48 are withdrawn from consideration. Claim 56 was previously canceled. Applicant has amended claims 40, 53, and 61. Support for these amendments can be found throughout the specification.

Independent claims 40 and 53 were amended to include “and wherein the olive kernel extract is unrefined and has oleic acid related acidity <3% and water content <1%,” as suggested by the Examiner in the Office Action. (Office Action dated 8/20/2009, pp. 7-8.) Although the Examiner only specifically suggested an amendment to claim 40, Applicant submits that the same amendment renders claim 53 allowable because the subject matter of the two claims is similar.

Claim 52 was amended to add a period at the end of the claim.

Claim 61 has been amended to correct the numerical ranges and to add a period at the end of the claim. The Amendment dated June 9, 2009 did not include the appropriate strikethrough for the material being deleted. The instant amendments include the correct strikethrough of the numbers being deleted.

No new matter has been added by these amendments.

### **II. Title**

Applicant has noticed that the title of the present application is incorrect on the Bibliographic Data Sheet (hereinafter the “Bib Sheet”) entered on October 2, 2008 in the Image File Wrapper on the Patent Application Information Retrieval portal (hereinafter “PAIR”) and also on the Application Data tab on PAIR. The title is also incorrect on the Filing Receipt mailed 6/8/2004. The Filing Receipt is not listed on PAIR and is attached as Appendix A. Applicant amended the title to the instant application in a Preliminary Amendment filed at the

time the application was filed on March 30, 2004. However, the amended title has not been acknowledged. Applicant amends the title in this instant Amendment to “Compositions for Treating Hormonally-Dependent Cancers.” Applicant respectfully requests that this amendment be entered and acknowledged in an Official Filing Receipt.

### **III. Priority**

Applicant previously amended the specification to reflect the chain of priority for the instant application in a Request for Continued Examination filed December 9, 2008. Although the Examiner acknowledged in an Office Action dated March 9, 2009 that the “Applicants have pointed out this application is a continuation-in-part of US application 09/771,669,” it does not appear that this claim to priority was ever entered. (Office Action dated 3/9/2009, p. 9) Applicant has noticed that the Bib Sheet entered on PAIR on October 2, 2008 and the Continuity Data on PAIR both state that this application is “a DIV of 09/771,664.” This appears to be a typographical error as the 09/771,664 application is an unrelated application.

Applicant only realized in November 2009 that this application may not be entitled to a priority date earlier than its March 30, 2004 filing date. Accordingly, Applicant is deleting the claim to priority in the specification. The original filing of this application was handled by Applicant’s previous counsel, who passed away in June 2008 and thereafter the application was subsequently transferred to the undersigned, and co-pendency with the prior applications may have been lacking when this application was filed.

Applicant respectfully submits that because the claim to priority was never entered, and because the claims stand finally rejected based upon art which was used by the Examiner before the claim to priority was added, the erroneous priority claim did not impact the prosecution of the instant case.

### **IV. Claim rejections under 35 U.S.C. § 112, Second Paragraph**

The Examiner rejected claim 61 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. Applicant has amended claim 61 to recite the correct numerical ranges.

Accordingly, Applicant respectfully requests that the rejection under 35 U.S.C. § 112, second paragraph, be withdrawn.

**V. Claim Rejections – 35 U.S.C. § 103(a)**

**A. Rejection of Claims 40, 43, 49-51, and 61**

The Examiner rejected claims 40, 43, 49-51, and 61 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Florio (WO 97/21434), in view of Singh et al. (U.S. Patent No. 5,858,371), Nobile et al. (U.S. Patent No. 4,265,823) (in light of Dr. Duke's phytochemical and ethnobotanical database), Widayarini et al., and Oka et al. (JP 06016531). (Office Action, p. 3.)

Applicant has amended claim 40 to include "wherein the olive kernel extract is unrefined and has oleic acid related acidity <3% and water content <1%," as suggested by the Examiner. (Office Action, pp. 7-8.) The Examiner has indicated that the addition of this element to claim 40 would render the claim allowable. (Office Action, pp. 7-8.) Applicant respectfully submits that claims 43 and 49-51 are also allowable because they depend from claim 40.

Applicant also amended independent claim 53 to include "wherein the olive kernel extract is unrefined and has oleic acid related acidity <3% and water content <1%." As noted above, Applicant submits that making the same amendment to claim 53 as is made in claim 40 renders claim 53 allowable. Applicant respectfully submits that claim 61, which depends from claim 53, is also allowable.

Based on the foregoing reasons, Applicant respectfully requests that the rejection of claims 40, 43, 49-51, and 61 under 35 U.S.C. § 103(a) be withdrawn.

**B. Claims 41-42, 44, and 52-60**

The Examiner rejected claims 41-42, 44, and 52-60 as allegedly being unpatentable over Florio in view of Singh, Nobile, Widayarini, Oka, and further in view of Ip et al. (Office Action, p. 5.)

Applicant has amended claim 40 to include “wherein the olive kernel extract is unrefined and has oleic acid related acidity <3% and water content <1%,” as suggested by the Examiner. (Office Action, pp. 7-8.) The Examiner has indicated that the addition of this element to claim 40 would render the claim allowable. (Office Action, pp. 7-8.) Applicant respectfully submits that claims 41-42, 44, and 52 are also allowable because they either directly or indirectly depend from claim 40.

Applicant also amended independent claim 53 to include “wherein the olive kernel extract is unrefined and has oleic acid related acidity <3% and water content <1%.” As noted above, Applicant submits that making the same amendment to claim 53 as is made in claim 40 renders claim 53 allowable. Applicant respectfully submits that claims 54-60, which depend from claim 53, are also allowable.

In view of the foregoing reasons, Applicant respectfully requests that the rejection of claims 41-42, 44, and 52-60 under 35 U.S.C. § 103(a) be withdrawn.

## **VI. Information Disclosure Statements**

Applicant is filing an Information Disclosure Statement herewith. Applicant previously filed an Information Disclosure Statement on September 17, 2009. Applicant respectfully requests that the Examiner consider the disclosed references and review and return an initialed copy of Form SB-08 that was submitted with the Information Disclosure Statement on September 17, 2009 and an initialed copy of Form SB-08 that is submitted with the Information Disclosure Statement filed herewith.

## **VII. Allowable Subject Matter**

The Examiner stated that the “subject matter is allowable in view of the fact that with proper amount of olive kernel extract, the absorption of chondroitin sulfate substantially increased.” (Office Action, p. 7.) Applicant has amended claims 40 and 53 to include “wherein the olive kernel extract is unrefined and has oleic acid related acidity <3% and water content

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<1%,” as suggested by the Examiner. (Office Action, p. 7.) Accordingly, Applicant believes the pending claims are allowable.

## **CONCLUSION**

Applicant believes that the application is in condition for allowance. Applicant respectfully requests that a timely Notice of Allowance be issued.

The time for responding has been extended to February 22, 2010 by the accompanying Petition for Three-Month Extension of Time and payment of the fee. The amount of \$555.00 for the three-month extension of time is being paid herewith.

The fee of \$405 for the Request for Continued Examination pursuant to 37 C.F.R. § 1.17(e) is being paid herewith.

Applicant believes no additional fees are due with this Response. However, if such a fee is due, or a credit is owed, the Director is hereby authorized to make them to our Deposit Account No. 08-0219, under Order No. 2003133.00125US10.

The Examiner is encouraged to call the undersigned at the telephone number given below with any questions.

Respectfully submitted,

Dated: February 19, 2010

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